IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 28TH FEBRUARY 2007 / 9TH PHALGUNA 1928

OP.No. 18827 of 1999(N)

PETITIONER:

T.K.SIDHARTHAN,
SERVICE NO.1173342,
KRISHNA BOOK BINDING WORKS,
KANNUR 670 001.

BY ADV. SRI.M.P.KRISHNAN NAIR

RESPONDENTS:
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1. **UNION OF INDIA,**
   REP. BY SECRETARY TO DEFENCE,
   NEW DELHI.

2. **CHIEF OF ARMY STAFF,**
   SENA BHAVAN,
   NEW DELHI.

3. **OFFICER COMMANDING**
   ARTILLERY DEPOT & RECORD,
   NASIK ROAD CAMP,
   NASIK.

4. **STATE OF KERALA,**
   REP. BY CHIEF SECRETARY,
   SECRETARIAT,
   THIRUVANANTHAPURAM.

BY ADV. SRI.K.M.JAMALUDHEEN, ADDL.CGSC
SRI.K.PRAVEEN KUMAR FOR R1 TO R3
SRI.THOMASMATHEW NELLIMOOTTIL,SR.PANEL

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 28/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP NO.18827/1999

ORDER IN C.M.P.NO. 30939 OF 1999 IN OP NO.18827 OF 1999

DISMISSED

28/02/2007 **SD/-**
ANTONY DOMINIC, JUDGE

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: A TRUE COPY OF THE REPRESENTATION DATED 22.8.98 TO THE RESPONDENTS.

EXT.P2: A TRUE COPY OF THE LETTER NO.1173342/0/L-1 TRG/PEN-2, DATED 2.9.98 ISSUED BY THE ASSISTANT COMMANDING OFFICER TOPKHANA ABHILEKH ARTILLERY RECORDS, NASIK ROAD CAMP.

EXT.P3: A TRUE COPY OF THE JUDGMENT DATED 29.9.98 PASSED BY THE HON'BLE HIGH COURT OF KERALA IN OP 18914/98 B

EXT.P4: A TRUE COPY OF THE LETTER NO.A/10150/LEGAL/PC-1130/3C/ARTY-3/333/CC/D(QS)/99 ISSUED BY MR.T.P.MONDAL, UNDER SECRETARY TO THE GOVERNMENT OF INDIA.

EXT.P5: A TRUE COPY OF THE DISCHARGE SLIP DATED 1.6.94 ISSUED BY THE MEDICAL OFFICER.

EXT.P6: TRUE COPY OF JUDGMENT DATED 19.8.97 IN OP NO.12035/91 PASSED BY THIS HON'BLE COURT.

EXHIBITS OF R1

EXTHIBIT R1(A): TRUE COPY OF THE PROCEEDINGS OF THE MEDICAL BOARD DATED 12.11.1964.

EXTHIBIT R1(B): TRUE COPY OF THE CERTIFICATE OF THE MEDICAL BOARD DATED 24.6.1964.

EXTHIBIT R1(C): TRUE COPY OF THE LETTER DATED 30.4.65 BY THE PETITIONER.

EXHIBIT R1(D): TRUE COPY OF THE LETTER DATED 3.3.1965 ISSUED BY THE CHIEF CONTROLLER OF ACCOUNTS (PENSION).

EXHIBIT R1(E): TRUE COPY OF THE PARA 173 OF PENSION REGULATIONS FOR THE ARMY, 1961.

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EXHIBIT R1(F): TRUE COPY OF THE LETTER DATED 23.3.65 ISSUED BY THE CHIEF CONTROLLER OF DEFENCE ACCOUNTS (PENSION).

EXHIBIT R1(G): TRUE COPY OF THE LETTER DATED 2.7.69 ISSUED BY GOVT. OF INDIA.

EXHIBIT R1(H): TRUE COPY OF THE LETTER DATED 22.9.98 ISSUED BY ARTILELRY RECORDS.

EXHIBIT R1(I): TRUE COPY OF THE LETTER DATED 21.4.99 ISSUED BY GOVT. OF INDIA.

//TRUE COPY//

ANTONY DOMINIC, J.

O.P NO. 18827 OF 1999

Dated this the 28th day of February, 2007

J U D G M E N T

The petitioner, who was enrolled as a Gunner in the Indian Army on the 30th of December 1961, was discharged on medical grounds on 30/5/1964. Ext.P5 is the discharge certificate which shows that he was diagnosised to have been suffering from "Hansen's disease". Although his discharge was way back in 1964, it is seen that by Ext.P1 dated 22/8/98, petitioner had represented that he is entitled to be granted benefits in the terms of rules applicable to him. That was rejected by Ext.P2 order and this order was challenged before this Court in OP 18914/98. The original petition was disposed of by Ext.P3 judgment directing the first respondent therein to consider the representation that was made to him, which was ExtP1 therein, and to pass orders thereon. In terms of the judgment of this court, his case was again considered and was rejected by Ext.P4 order. In Ext.P4, it is stated that his discharge was due to Leprosy Polyneuritic and

that the disease was not attributable to nor was it aggravated by the Military service. On this ground, it was held that he was not eligible to be granted disability pension in terms of Rule 173 of the Pension Regulations for the Army. It is challenging Ext.P4 and seeking consequential benefits, this original petition has been filed.

2. Counter affidavit has been filed by the respondents along with the medical records pertaining to the petitioner and contending that Leprosy Polyneuritic disease suffered by the petitioner was not attributable to nor was it aggravated by the Military service and therefore the petitioner was not entitled to the disability pension.

3. The original medical records were made available at the time of hearing. It is seen from the report of the Medical Officer that the disability of the petitioner is mentioned as Leprosy Polyneuritic and it is also recommended that he is to be invalidated out of service. The Medical Board is seen to have concluded that the disease was not attributable to nor was it aggravated by Military service. It is on the basis of this

conclusion of the Medical Board that the claim of the petitioner has been negatived by the respondents.

4. Counsel for the petitioner submits that what the petitioner was suffering was in fact only snow bite and not Leprosy Polyneuritic as mentioned in the medical reports. According to him, the attempt was only to shunt him out of service and medical records reflect only such an attempt. I am not inclined to accept the submission for the reason that it was way back in 1964 that the Medical Board had concluded that the petitioner was suffering from Leprosy Polyneuritic. None of the medical reports made available to me suggest that the petitioner was suffering any disease other than what is mentioned in the medical records. Facts being so, I am not in a position to accept the submission of the learned counsel for the petitioner, and that too, in the absence of any records to the contrary supporting his contentions. The contention regarding the alleged attempt to shunt him out of service, is also without any basis and is only to be stated and rejected

5. Counsel for the respondents made reference to a

judgment of the Hon'ble Supreme Court reported in **Controller of Defence Accounts Pension v. Balachandran Nair (AIR 2005 SC 4391)**. In that judgment, the Hon'ble Supreme court faulted with the judgment of the High court and overruled the same for the reason that High Court ought not have overruled the conclusion of the Medical Board and ruled in favour of an ex-army claimant for invalidation pension. The Hon'ble Supreme Court held that when the opinion of the Medical Board is available, the court has to normally go by the Medical Board's report and the burden is on the petitioner to prove that the same is wrong. In this case, the medical reports suggests that the petitioner was suffering Leprosy Polyneuritic and there is no record, muchless any medical record, leading to a conclusion otherwise.

In such circumstances, I find no merit in this Original petition and it is accordingly dismissed. No costs.

ANTONY DOMINIC, JUDGE

Rp